

Appl. No. : 09/892,900
Filed : June 26, 2001

REMARKS

In response to the Office Action mailed September 6, 2005, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 14-17, 19, 23, 24, 30, 33 and 36 remain pending. No claims have been canceled or added by this Amendment. Claims 14, 19 and 23 have been amended.

In the changes made by the current amendment, ~~deletions are shown by strikethrough, and additions are underlined.~~

Claims 14-17, 19, 23, 24, 30, 33 and 36 Are In Condition For Allowance

Claims 14-17, 19, 23, 24, 30, 33 and 36 presently stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bau. Applicants respectfully submit that the claims, as amended, are allowable over Bau and request reconsideration and allowance of the same.

Response to Examiner's Position

In page 4 of the outstanding Office Action, the Examiner has recognized that the Bau reference does not disclose an infusion pump in which, among other limitations, the movement of the platen is about one-fourth of a minimum dimension of a space configured to hold the fluid bag. However, the Examiner has taken the position that no criticality of the specific range being claimed was set forth in the specification. Further, the Examiner contends that the discovery of such an optimum or workable range would involve only routine experimentation and, thus, the subject claim limitation would not support patentability.

Applicants respectfully disagree. As noted in the Amendment filed June 17, 2005, M.P.E.P. § 2144.05(II)(B) sets forth that only result-effective variables can be optimized through routine experimentation. The Examiner has not made a showing that the claimed relationship between the platen movement dimension and the minimum dimension of the fluid bag space is a result-effective variable. Accordingly, despite whether the claimed relationship is shown to be critical, the present obviousness rejection cannot be maintained. In any event, in order to expedite the allowance of the present application, Applicants have amended the claims to further distinguish the Bau reference, as is described in greater detail below.

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Claims 14, 19 and 23 Have Been Amended

Claims 14, 19 and 23 have been amended to recite an infusion pump including, among other limitations, at least one spring positioned between a shell and a platen of the pump and configured to bias the platen in an infusion direction, wherein the working length of the spring is *no more than about 41 percent of a free length* of the at least one spring. The present claim amendment is supported at least by page 49, lines 18-28 of the present application. Such an arrangement facilitates the spring applying a relatively constant force to the platen which, in turn, results in a relatively constant infusion rate from the pump. Applicants submit that the claimed infusion pump, as a whole, is not disclosed or suggested by the prior art of record either alone or in combination. Accordingly, allowance of Claims 14, 19 and 23 is respectfully requested.

Claims 15-17, 24, 30, 33 and 36 depend from one of allowable Claims 14, 19 or 23. These claims are allowable not only because they depend from an allowable claim, but upon their own merit as well. Accordingly, reconsideration and allowance of Claims 15-17, 24, 30, 33 and 36 is respectfully requested.

CONCLUSION

For at least the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss C. Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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